

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF MASSACHUSETTS

In re:

ROBERT P. FARDIN &
STEPHANIE L. CREEGAN

Chapter 7
Case No. 09-40293-JBR

U.S. BANK NATIONAL ASSOCIATION FOR
THE BENEFIT OF ADJUSTABLE RATE MORTGAGE
TRUST 2005-8 ADJUSTABLE RATE MORTGAGE
BACKED PASS-THROUGH CERTIFICATES, SERIES 2005-8
its successors or assigns,
Movant

v.

ROBERT P. FARDIN &
STEPHANIE L. CREEGAN,
Debtors

MOTION FOR RELIEF FROM AUTOMATIC STAY
AND FOR AUTHORITY TO FORECLOSE MORTGAGE

NOW COMES U.S. Bank National Association for the Benefit of Adjustable Rate Mortgage Trust 2005-8 Mortgage Backed Pass-Through Certificates, Series 2005-8 (hereinafter “Lender”) a secured creditor, by and through undersigned counsel, and hereby moves this Honorable Court for relief from the automatic stay and for authority to foreclose a certain mortgage encumbering the property owned by the Debtors known and numbered as 135 Frothingham Street Lowell, Massachusetts, 01852, pursuant to Bankruptcy Rules 4001 and 9014 and Section 362 of the Bankruptcy Code.

In support of this Motion, Lender states as follows:

1. This Court has jurisdiction over this proceeding pursuant to 28 U.S.C. § 1334 and 28 U.S.C. § 157(b)(2)(G). This case relates to a case under Title 11 of the United States Code (the “Bankruptcy Code”). This proceeding is a “core” proceeding as this term is defined in the Code.

2. On January 30, 2009, Robert P. Fardin and Stephanie L. Creegan, debtors in the above captioned case (hereinafter “Debtors”), filed a voluntary petition under Chapter 7 of the Bankruptcy Code.
3. Debtors are the owners of real property known and numbered as 135 Frothingham Street Lowell, Massachusetts, 01852.
4. Lender is the current holder of a certain note given by Debtors to Countrywide Home Loans, Inc. in the original principal amount of \$359,650.00, dated April 27, 2005 (hereinafter the “Note”). The Note is secured by a certain mortgage given by Debtors to Mortgage Electronic Registration Systems, Inc. (“MERS”), as nominee for Countrywide Home Loans, Inc., of even date and original principal amount, recorded with the Middlesex (N.D.) Registry of Deeds in Book 18665, Page 61 (hereinafter the Mortgage). Lender is now the holder of the mortgage via assignment.
5. The mortgage encumbers the property known and numbered as 135 Frothingham Street Lowell, Massachusetts, 01852 (hereinafter “Property”). A copy of the Note, Mortgage and assignment are annexed hereto and marked as Exhibits “A”, “B” and “C”. The Mortgage is in first position. Aside from the Mortgage, there is no other collateral securing Debtors’ obligation under the Note.
6. Debtors have defaulted on the Note and Mortgage by failing to make regular monthly mortgage payments to Lender.
7. As of December 3, 2009, the balance due Lender on the Note was approximately \$380,000.00 (may not include negative escrow balances or recent escrow advances). The full amount of the Lender’s claim together with allowable post-petition interest, reasonable attorneys’ fees, court costs, and other recoverable expenses, is secured by the Mortgage.
8. The fair market value of the Property is \$350,000.00 according Schedule “A” of the Debtors’ Chapter 7 Petition. Based upon this valuation, it is Lender’s opinion that the Liquidation Value of the premises is \$330,404.00 (calculated as the fair market value less a reasonable realtor’s fee of 5% (\$17,500.00), deed stamps (\$1,596.00), and anticipated costs incurred for a real estate closing (\$500.00)).
9. As of the filing of this Motion, Debtors owe Lender a total contractual arrearage of \$28,991.49, calculated as follows:

- 2 monthly payments (12/1/08 – 1/1/09) at \$2,193.01	\$ 4,386.02
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- 11 monthly payments (2/1/09 – 12/1/09) at \$2,177.77	\$23,955.47
<u>- Motion Fees and Costs</u>	<u>\$ 650.00</u>
Total Contractual Arrearage	\$28,991.49

By the time of the hearing on this Motion, it is anticipated that the January 1, 2010, monthly mortgage payment (\$2,177.77) will also be due and outstanding, bringing the total post-petition arrears to \$31,169.26.

10. There are other secured encumbrances upon the Property as follows:

Lien Type	Lien Holder	Lien Amount	Book/Page
1 st Lien	U.S. Bank	\$380,000.00	18665/61
2 nd Lien	Countrywide	\$120,350.00	20255/290
Total		\$500,350.00	

11. The total secured encumbrances on the Property are \$500,350.00.

12. Debtor Jorge Martinez has recorded a homestead against the Property in the same Registry of Deeds in Book 18335, Page 83.

13. Lender is entitled to Relief from the Automatic Stay for cause pursuant to 11 U.S.C. § 362(d)(1) inasmuch as the Debtors have failed to make regular monthly mortgage payments to Lender as set forth herein in contravention of the terms of the Note and Mortgage. Moreover, the Debtors have stated that the Property will be surrendered in their Statement of Intention.

14. Lender is also entitled to Relief from the Automatic Stay pursuant to 11 U.S.C. § 362(d)(2) in that Debtors have no equity in the Property above and beyond the Property's liquidation value and the Property is not necessary to an effective reorganization of the Debtors' estate.

15. No prior application for the relief requested herein has been made.

WHEREFORE Lender respectfully requests that this Honorable Court:

- a) Grant the Motion for Relief from the Automatic Stay, and for leave to Foreclose Mortgage, allowing U.S. Bank National Association for the Benefit of Adjustable Rate Mortgage Trust 2005-8 Mortgage Backed Pass-Through Certificates, Series 2005-8, its successors or assigns, to foreclose said mortgage (including, at its sole

- option, leave to accept a deed-in-lieu of foreclosure from the Debtor, his heirs, successors, assigns or transferees); and for it or a third party purchaser to prosecute summary process proceedings to evict any persons residing in the Property; and
- b) Grant such other Relief as this Honorable Court may deem just and proper.

Respectfully submitted,
U.S. Bank National Association for the
Benefit of Adjustable Rate Mortgage Trust
2005-8 Mortgage Backed Pass-Through
Certificates, Series 2005-8
By its Attorneys
Guaetta & Benson, LLC

DATED: January 13, 2010

/s/ Sean B. Cullen
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UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF MASSACHUSETTS

In re:

ROBERT P. FARDIN &
STEPHANIE L. CREEGAN,
Debtors

Chapter 7
Case No. 09-40293-JBR

ORDER GRANTING RELIEF FROM AUTOMATIC STAY
AND AUTHORITY TO FORECLOSE MORTGAGE

This case having come before the undersigned United States Bankruptcy Judge for the District of Massachusetts, upon the request of U.S. Bank National Association for the Benefit of Adjustable Rate Mortgage Trust 2005-8 Mortgage Backed Pass-Through Certificates, Series 2005-8 (hereinafter "Lender") for Relief from the Automatic Stay and For Leave to Foreclose its Mortgage; and no objection having been filed, or after a hearing thereon, as the case may be, and after proper notice was given;

WHEREFORE, the Court grants Relief from the Automatic Stay to Lender, and its successors or assigns, to seek to foreclose a certain mortgage on property known and numbered as 135 Frothingham Street Lowell, Massachusetts, 01852, recorded with the Middlesex (N.D.) Registry of Deeds in Book 18665, Page 61, by entry and by exercise of the power of sale contained in the mortgage.

NOW THEREFORE, it is hereby ORDERED, ADJUDGED AND DECREED that Lender, its successors or assigns, are granted Relief from the Automatic Stay to seek to foreclose the mortgage (including, at its sole option, accepting a deed-in-lieu of foreclosure from the Debtors, their heirs, successors, transferees or assigns or offering, providing and entering into any potential forbearance agreement, loan modification, or other loan workout with the Debtors) recorded with the Middlesex (N.D.) Registry of Deeds in Book 18665, Page 61, by entry and by exercise of the power of sale contained in the mortgage and leave to seek to proceed with summary process proceedings to evict any persons residing in the Property, in accordance with applicable state and federal law.

Dated this _____ day of _____, 20____ at the United States Bankruptcy Court.

Hon. Joel B. Rosenthal
United States Bankruptcy Court Judge

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF MASSACHUSETTS

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CERTIFICATE OF SERVICE

I, Sean B. Cullen, Esq., as Attorney for U.S. Bank National Association for the Benefit of Adjustable Rate Mortgage Trust 2005-8 Mortgage Backed Pass-Through Certificates, Series 2005-8, hereby certify that I have this date served copies of the foregoing Motion for Relief from Automatic Stay and for Authority to Foreclose Mortgage in reference to the above-captioned case, by mailing same first class, postage prepaid (unless otherwise noted), upon the following parties:

Robert P. Fardin
Stephanie L. Creegan
135 Frothingham Street
Lowell, MA 01852

Counsel for Debtors
Thomas P. Quinn, Esq. (VIA ECF)

Counsel for Ford Motor Credit Company
Mitchell J. Levine, Esq. (VIA ECF)

Chapter 7 Trustee
John A. Burdick, Esq. (VIA ECF)

Assistant US Trustee
Richard King, Esq. (VIA ECF)

Countrywide
P.O. Box 660694
Dallas, TX 75266

City of Lowell – Tax Collector
375 Merrimack Street
Lowell, MA 01852

DATED: January 13, 2010

/s/ Sean B. Cullen
Sean B. Cullen, Esq. (BBO# 663906)